

***THE HON'BLE SRI JUSTICE BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE Ch.S.R.K.PRASAD

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+WRIT PETITION NO. 20277 OF 2004

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% 07-12-2004

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Between:

K.Sarveswara Rao.

..... PETITIONER

AND

The Government of Andhra Pradesh, Rep. by its Secretary,

Home Department, Secretariat Buildings, Hyderabad. And two others.

...RESPONDENTS

For the Appellant : MR.K.Suresh Reddy.

For the Respondents : THE ADVOCATE GENERAL.

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1976 SC 734.
2. AIR 1975 SC 550.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 20277 of 2004

Between:

K. Sarveswara Rao, S/o. Nageswara Rao,
R/o. Chatrai Village, Chatrai Mandal, Krishna District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep. by its Secretary,
Home Department, Secretariat Buildings, Hyderabad.

2 The Collector and District Magistrate, Krishna District,

Machilipatnam.

3 The Superintendent of Central Prison, Rajahmundry.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus or any other appropriate Writ or Order or direction directing the respondents to produce Kamapasati Nageswara Rao son of Subbaiah, aged about 55 years, resident of Chatrai Village, Chatrai Mandal, Krishna District, presently detained in Central Prison, Rajahmundry, and release him forthwith by declaring the order of detention in Rc.No. 2884/2004/C1 dated 25-10-2004 passed by the second Respondent as illegal and unconstitutional.

Counsel for the Petitioner: MR.K.SURESHREDDY

Counsel for the Respondent Nos 1 to 3.: THE ADVOCATE GENERAL

The Court made the following :

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ORDER: (per Sri BN.J)

Heard learned counsel for the parties.

The petitioner has challenged the detention of the detenu ordered by the District Magistrate in terms of the A.P. Prevention of Dangerous Activities of Boot Leggers, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter called 'the Act').

Counter has been filed. One of the paragraphs in the grounds of detention communicated to the petitioners reads as under:

“ There are several oral complaints received against you about the illegal activities of yours are causing wide spread danger to public health and creating a feeling of insecurity among the general public of that locality. If your activities are allowed unchecked there is every danger of its

leading to Liquor Tragedies costing many lives of poor people in Chatrai village and its surroundings and thereby effects the Public Order.”

Learned counsel for the petitioner on the last occasion submitted that obviously some material was taken into consideration by the District Collector while coming to the subjective satisfaction before passing of the impugned order which was not communicated to the detenu and therefore he got prejudiced as far as filing of representation in terms of Article 22(5) of the Constitution of India is concerned. Therefore, the impugned order cannot be sustained and it has to be quashed.

We summoned the record in order to ascertain whether any oral information received by the Collector had been reduced by him into writing or it had been reduced into writing by anybody else who had received it. Record does not disclose that any oral information regarding the alleged illegal activities of the detenu were reduced into writing by anybody and record does not also disclose that there was any material before the Collector before passing of the order which would relate to “several oral complaints”. It is well settled that whatever material taken into consideration by the detaining authority has to be supplied to the detenu and Court should also know as to what was the material before the detaining authority to come to the conclusion that the person is needed to be detained. The matter has been considered in various judgments.

We refer to the judgments of the Supreme Court in ***Md.D.A.KHAN v. STATE OF WEST BENGAL and in KHUDIRAM DAS v. STATE OF WEST BENGAL***. In ***D.A.Khan’s case*** (1 supra), the Supreme Court held “ in these circumstances, therefore, we are satisfied that the District Magistrate before passing the order of detention had other materials also before him. It cannot be said to what extent the District Magistrate was influenced by the other materials and not by the material which is mentioned in the ground of detention. Thus the order of detention suffers from a very serious infirmity which goes to the root of the matter.” In the present case also we do not know as to how much influence the District Magistrate had by the oral complaints received by him and how much influence he had by the facts he

mentioned in the grounds of detention.

Similarly, in ***KHUDIRAM DAS's case*** (2 supra) the Court held as under.

“It is therefore not only the right of the court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighted with the detaining authority in reaching the requisite satisfaction. The Judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts of materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority.”

For the reasons given hereinabove, we allow the writ petition and quash the order of detention and order release of the detenu forthwith, if not needed in any other case.

07..12..2004

NB: LR copy to be marked

(B/o)

msv.

To

One fair copy to Hon'ble Sri Justice Bilal Nazki for his lordships kind perusal

One fair copy to Hon'ble Sri Justice Ch.SRKP.J for his lordships kind perusal

1 The Secretary to Government of A.P. Home Department, Secretariat , Hyderabad.

2 The Collector and District Magistrate, Krishna District,

Machilipatnam.

3 The Superintendent of Central Prison, Rajahmundry.

4. 2 CCs to The Advocate General, High Court of A.P. (OUT)

5. 2 CD copies.

6. 8 LR copies.

7. The Under Secretary, Union of India, Ministry of Law Justice and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates Association, Library, High Court Buildings, Hyderabad.

That Rule nisi has been made absolute as above. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the 7th day of December, Two Thousand and four.